

Wage and Hour Division, Labor

§ 780.520

EXEMPT PROCESSING

§ 780.515 Processing requirements of section 13(a)(14).

When it has been determined that an employee is an “agricultural employee employed in the growing and harvesting of shade-grown tobacco,” to whom section 13(a)(14) of the Act may apply, it then becomes necessary to ascertain whether he is “engaged in the processing * * * of such tobacco, prior to the stemming process, for use as Cigar-wrapper tobacco.”

§ 780.516 “Prior to the stemming process.”

The exemption provided by section 13(a)(14) applies only to employees whose processing operations on shade-grown tobacco are performed “prior to the stemming process.” (See H. Rept. No. 75, 87th Cong., first sess., p. 26). This means that an employee engaged in stemming, the removal of the midrib from the tobacco leaf (*McComb v. Puerto Rico Tobacco Marketing Co-op. Ass’n*, 80 F. Supp. 953, affirmed 181 F. 2d 697), or in any operations on the tobacco which are performed after stemming has begun will not come within the exemption. Stemming and all subsequent operations are nonexempt work.

§ 780.517 “For use as Cigar-wrapper tobacco.”

The phrase “for use as Cigar-wrapper tobacco” limits the type of end product which may be produced by the exempt operations. As its name indicates, cigar-wrapper tobacco is used as a cigar wrapper and is distinguished from other types of tobacco which serve other purposes such as filler, pipe, chewing, and other kinds of tobacco. Normally, shade-grown tobacco is used only for cigar wrappers. However, if the tobacco is not being processed by the employer for such specific and limited use, the employee is not engaged in exempt processing operations.

§ 780.518 Exempt processing operations.

The processing operations under section 13(a)(14) include, but are not limited to, “drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling” of the shade-grown

tobacco. As previously noted, these operations are exempt only if performed on shade-grown tobacco prior to the stemming process to prepare the tobacco for use as cigar wrapper tobacco.

§ 780.519 General scope of exempt operations.

All operations normally performed in the processing of shade-grown tobacco for use as cigar wrapper tobacco, if performed prior to the stemming process and for such use, are included in the exemption. As a whole, this processing substantially changes the physical properties and chemical content of the tobacco, improves its color, increases its combustibility, and eliminates the rawness and harshness of the freshly cured leaf. In the process the leaves are piled in “bulks” of about 4,000 pounds each to undergo a “sweating” or “fermentation” process in which temperature and humidity are carefully controlled. Proper heat control includes, among other things, breaking up the bulk, redistributing the tobacco, and adding water. Proper fermentation or aging requires the bulk to be reconstructed several times. This bulking process may last from 4 to 8 months. When the tobacco is properly dried, cured, fermented, and aged, it is moved to long tables where the leaves are individually graded and sorted, after which they are tied in bundles called “hands” of about 30 to 35 leaves each, which are then baled for shipment. Equipment required for the work may include a steam-heated plant, platforms, thermometers, bulk covers, baling boxes and presses, baling mats and packing, sorting, and grading tables. (See *Mitchell v. Budd*, 350 U.S. 473, 475.) Employees performing any part of this processing prior to the stemming process, including the operations named in section 13(a)(14), may come within the exemption if they are otherwise qualified and if the tobacco on which they work is being processed for use as cigar wrapper tobacco.

§ 780.520 Particular operations which may be exempt.

(a) *General.* Section 13(a)(14) lists a number of operations as being included in the processing of shade-grown tobacco. Some of these are, and others